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INSIDE THIS ISSUE

Consumer	pg. 1
Employment	pg. 1
Fair Debt Collection Practices Act	pg. 2
Oil & Gas	pg. 2
Securities	pg. 3
Standing	pg. 3
Toxic Tort	pg. 4



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CONSUMER

Access to Medical Records

Faber v. Ciox Health, LLC, No. 16-cv-02337, 2018 WL 3371120 (W.D. Tenn. Jul. 10, 2018) (Anderson, J.) Patients brought suit against a healthcare company alleging improper overcharges for access to their medical records in violation of state and federal law. Plaintiffs moved for certification pursuant to Rule 23(b)(1)(A) and alternatively via Rule 23(b)(3).

The Court granted class certification, reasoning in support of its decision first that the class was ascertainable and Plaintiff a member of the class. In terms of numerosity, the Court found an estimate of thousands of patients to be sufficient, while commonality was satisfied on grounds of the Court's identification of six common questions. The Court also found typicality satisfied on grounds of Plaintiff's claims sharing a common source with the class's claims, observing that factual variances did not affect this significantly. The Court also found Plaintiffs and counsel adequate despite Defendant's contention that the attorneys might be needed as fact witnesses.

Finding that Rule 23(b)(3)'s requirements were satisfied on grounds that the common questions concerning whether Defendant's conduct violated state law would predominate, the Court declined to address Rule 23(b)(1)(A).

EMPLOYMENT

Overtime

Chado v. National Auto Inspections, LLC, No. 17-cv-2945, 2018 WL 3420018 (D. Md. Jul. 13, 2018) (Copperthite, J.)

Plaintiffs brought suit against former employer, alleging violations of the Fair Labor Standards Act ("FLSA") and state laws by virtue of failing to pay overtime. Plaintiffs moved to add thirty-six plaintiffs and two defendants via an amended complaint, and sought certification.

The Court granted both motions. In terms of the motion for class certification, the Court first considered numerosity, finding it satisfied by virtue of 238 employees and 39 named plaintiffs. In terms of commonality, the Court found that Plaintiffs alleged a similar injury for all class members caused by the same common policies, which was sufficient. Similarly, for typicality, the Court found that Plaintiff's claims arose from the same course of conduct as to all class members.

Turning then to predominance, Plaintiff argued that the calculation of damages under the statute was the same for all class members, and that the only piece of information needed was hours worked. While Defendant argued that individual inquiries were needed due to the existence of different jobs and pay rates, the Court sided with Plaintiffs, finding that the common issue of whether Defendant is liable for overtime predominated over individualized concerns. The Court also noted that damages were incidental in the instant case, and found predominance satisfied.

FAIR DEBT COLLECTION PRACTICES ACT

Adequacy / Rule 68 Offer

Franco v. Allied Interstate LLC, No. 13-cv-4053, 2018 WL 3410009 (S.D.N.Y. Jul. 13, 2018) (Forrest, J.) Plaintiff brought suit for violation of the Fair Debt Collection Practices Act (“FDCPA”) against a debt collection agency, alleging violations of the FDCPA by virtue of defendant’s written communications containing improper warnings of wage garnishment. After a motion for class certification was denied, Plaintiff appealed, and the Second Circuit reversed on grounds that an unaccepted offer is a legal nullity. Plaintiff again sought class certification.

The Court denied the motion, reasoning in support of its decision that in terms of Rule 23 requirements, Plaintiff faced an adequacy challenge in that his rejection of an offer of judgment that would have compensated him in excess of his alleged injury had not been explained in the factual record beyond counsel’s argument that the offer did not provide for class-wide relief. The Court thus concluded that without an adequate factual record on the subject, it was uncertain as to whether Plaintiff would agree to a similar settlement for the class, any monetary settlement at all, and deemed hypothetical Plaintiff’s argument that denying class certification on this grounds would allow Defendant to avoid liability by offering individual judgments.

OIL & GAS

Zehentbauer Family Land LP v. Chesapeake Exploration, LLC, No. 15-cv-2449, 2018 WL 3496089 (N.D. Ohio Jul. 20, 2018) (Pearson, J.)

Plaintiffs brought suit alleging that improper royalty reductions were made by Defendants, relating to oil and gas leases. Plaintiffs sought certification of three subclasses.

The Court granted the motion in part, certifying two of the subclasses. Reasoning in support of its decision, the Court first addressed numerosity, finding it satisfied on grounds of there being at least 272 leases in the class. While there was some dispute about the correct number of leases (which could potentially be more), numerosity was satisfied based on the floor of the number in dispute.

In terms of commonality, the Court found Defendants’ method of calculating royalties to be both common and at the heart of case. While Defendants argued also that analysis of each well in question was required, the Court found this to be a damages question not critical for resolution at this stage. The Court also found that variations in lease terms did not overcome commonality, as the calculation policy was the same for all leases. Similar reasoning applied for typicality in two of the three subclasses; the third failed due to Plaintiff lacking a named representative for that subclass. The Court then found ascertainability satisfied on grounds that Defendant’s lease records were sufficient to determine class membership.

Looking next at predominance, the Court again rejected the same arguments presented against commonality, and found for superiority that despite the existence of another similar litigation in progress (which was filed after this action), the class’s interest in efficient resolution for a large group of stakeholders made a class action the superior method of adjudication of the underlying dispute.

SECURITIES

In Re Twitter Inc. Securities Litig., No. 16-cv-05314, 2018 WL 3440708 (N.D. Cal. Jul. 16, 2018) (Tigar, J.) Investors brought suit for violation of securities laws against Defendants, alleging misrepresentation by virtue of false or misleading statements. Plaintiffs moved for certification.

The Court granted the motion, reasoning in support of its decision first that there was no basis to exclude certain traders from the class, and declined Defendants' request to modify the class definition.

Turning then to Rule 23 issues, the Court found numerosity satisfied by virtue of there being millions of shares at issue. The Court found commonality satisfied by common questions as to whether Defendants made misrepresentations by the statements or omissions in question. In terms of adequacy, the Court rejected Defendants' argument that appointing two co-lead plaintiffs and two firms to represent the class would contravene the Private Securities Litigation Reform Act.

In terms of Rule 23(b)(3) predominance, while Defendant argued that Plaintiff had failed to proffer a sufficient damages model that could apply on a class-wide basis, the Court reasoned that Defendant had not attacked the methodology, but only the fact that Plaintiffs' retained expert had not yet calculated the potential damages. Finding the proposed model sufficient, the Court ruled that predominance was satisfied, and class certification thus warranted.

STANDING

Macy v. GC Services Ltd. Partnership, No. 17-5593, 2018 WL 3614580 (6th Cir. Jul. 30, 2018) (Crabtree, J.) Plaintiff brought suit for violation of the FDCPA against a debt collector, alleging that letters were sent to them with deficient notices. After the United States District Court for the Western District of Kentucky denied Defendant's motion to dismiss for lack of standing, and certified the class. Defendant appealed.

The Sixth Circuit affirmed class certification and held that Plaintiffs had standing. Reasoning in support of its decision, the Court first considered standing, namely whether the alleged FDCPA violation constituted injury in fact. The Court looked to the United States Supreme Court's 2016 decision in *Spokeo Inc. v. Robins* to rebut a number of cited precedents raised by Defendant, holding that Defendant's alleged violation had been demonstrated by Plaintiffs as a "risk of real harm" to their interest in being free from deceptive debt collection practices, which statutorily exists in a private right of action under the FDCPA.

In terms of class certification, the Court found that Defendant's argument in commonality rested solely on the standing argument, and that this carried over to other elements. Accordingly, the Court found Defendant had not sufficiently demonstrated an abuse of discretion in certifying the class.

TOXIC TORT

Groundwater Pollution

Martin v. Behr Dayton Thermal Products LLC, No. 17-3663, 2018 WL 3421711 (6th Cir. Jul. 16, 2018) (Stranch, J.)

Property owners brought a state toxic tort action against the operators of automotive and dry cleaning facilities, alleging chemical groundwater pollution. After the case was removed to federal court and class certification under Rule 23(b)(3) denied by the United States District Court for the Southern District of Ohio (due to Ohio's actual injury and causation proof standards), seven issues were certified for class treatment under Rule 23(c) (4). Defendants appealed.

The Sixth Circuit affirmed, reasoning in support of its decision that the district court had certified only issues capable of class-wide resolution, and that Defendants did not identify any individualized inquiries to outweigh the common questions on those issues. The Court also found a class action to be the most efficient way to resolve the certified issues, and to materially advance the litigation, thus justifying satisfaction of the superiority requirement.

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